Supreme Court, U. S.
FILED
OCT 15 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-5721

LEVA ADKINS,
Petitioner

vs.

THE HON. ROBERT C. UNDERWOOD; THE HON. WALTER V. SCHAEFER; THE HON. DANIEL P. WARD; THE HON. JOSEPH H. GOLDENHERSH; THE HON. THOMAS E. KLUCZYNSKI; THE HON. HOWARD C. RYAN; THE HON. CHARLES H. DAVIS; THE HON. CHARLES J. SMITH

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HARRY M. PHILO
Philo, Maki, Cockrel, Robb,
Spearman and Cooper
409 Griswold, Fourth Floor
Detroit, Michigan 48226

VERNE LAWYER
427 Fleming Building
Des Moines, Iowa 50309

FRANK SCHUBERT
403 Safety Building
Rock Island, Illinois 61201

Attorneys for Petitioner

Johnson Reproduction Inc., 211 West Fort Street, Detroit, Michigan 48226
962-4020

SUBJECT INDEX

	Page
Opinions Below	2
Jurisdiction	2
Questions Presented	2
Constitutional Provisions Involved	3
Statute Involved	3
Court Rule Involved	3
Statement of the Case	4
Reasons for Granting Writ	5
Relief Sought	8
Appendix A – Federal District Court Opinion	9
Appendix B – Opinion and Judgment of the Seventh Circuit Court of Appeals	17

INDEX TO AUTHORITIES CITED

Cases

Baldwin v Hale, 68 U.S. 223, 17 L. Ed. 531 (1863)	6
Baltimore & O. R. Co. v United States, 298 U.S. 349, 80 L. Ed. 1209, 56 S. Ct. 797 (1936)	6
Blake v McClung, 172 U.S. 239, 43 L. Ed. 432, 19S. Ct. 165 (1898)	6
Broderick v Rosmer, 294 U.S. 629, 79 L. Ed. 1100, 55 S. Ct. 589 (1935)	7
Goldberg v Kelly, 397 U.S. 254, 25 L. Ed. 2d. 287, 90 S. Ct. 1011 (1970)	7
Gulf Oil Corp. v Gilbert, 330 U.S. 501, 91 L. Ed. 1055, 67 S. Ct. 839 (1947)	7
McKnett v St. Louis & S. F. R. Co., 292 U.S. 230, 78 L. Ed. 1227, 54 S. Ct. 690 (1934)	6
Melancon v McKeithen, 345 F. Supp. 1025, 1031 (Ed. La. 1972), affirmed 409 U.S. 1098, 34 L. Ed. 2d. 679, 93 S. Ct. 908 (1973)	7
Mitchum v Foster, 407 U.S. 225, 32 L. Ed. 2d. 705, 92 S. Ct. 2151 (1972)	7
Scheuer v Rhodes, 416 U.S. 232, 40 L. Ed. 2d. 90, 94, S. Ct. 1683 (1974)	5, 6

STATUTES

28 USC 1254 (1) 2
42 USC 1983 ..... 2, 3, 5, 7
U.S. Constitution, Amendment XIV 3
U.S. Constitution, Art. IV, s 2 3

COURT RULE

Rule 12(b)(6) Federal Rules of Civil Procedure 3

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. .....

LEVA ADKINS,
Petitioner

vs.

THE HON. ROBERT C. UNDERWOOD; THE HON. WALTER V. SCHAEFER; THE HON. DANIEL P. WARD; THE HON. JOSEPH H. GOLDENHERSH; THE HON. THOMAS E. KLUCQYNSKI; THE HON. HOWARD C. RYAN; THE HON. CHARLES H. DAVIS; THE HON. CHARLES J. SMITH

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner, Leva Adkins, hereby petitions for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit Affirming the District Court's dismissal of petitioner's complaint.

OPINIONS BELOW

The opinion of the Seventh Circuit Court of Appeals is as yet unreported.

A copy of the opinion is printed in the Appendix to this Petition.

The opinion of the Federal District Court is reported at 370 F. Supp. 510 (1974). A copy of the opinion is printed in the Appendix to this Petition.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1). The opinion and order of the Seventh Circuit Court of Appeals were filed on July 17, 1975.

QUESTIONS PRESENTED

I.

In an action for declaratory and injunctive relief, is not a plaintiff minimally entitled to an evidentiary hearing when:

- The District Court's decision is premised on a finding that the plaintiff seeks to relitigate issues already litigated in a State Court,
- Yet the gravamen of plaintiff's complaint is that she was denied any opportunity to litigate those issues in the State Court:

AND WHEN:

- The District Court's decision is further premised on a finding that plaintiff seeks review of the propriety of the State Court judgment,
- Yet plaintiff complains of a denial of a hearing prior to decision in the State Court and does not seek review of any substantive ruling of the State Court;

So as to require remand to the District Court for an opportunity to contest facts assumed in the District Court's decision?

II.

Does not 42 U.S.C. § 1983 give a U.S. District Court jurisdiction to protect a plaintiff's equal protection and due process rights when:

- A plaintiff further claims that State judicial Officers have completely precluded her bringing suit against citizens of the State who are not amenable to suit in any other Court,
- A plaintiff claims that State Judicial Officers have decided factual issues adversely to her interests without allowing any opportunity for an evidentiary hearing on those issues;

So as to require entertainment of a suit seeking injunctive relief?

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner's cause of action asserts a violation by the defendants of two distinct Constitutionally protected rights:

> The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.
> U.S. Constitution, Art. IV., § 2

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
> U.S. Constitution, Amendment XIV

STATUTE INVOLVED

The Federal Civil Rights Act provides a remedy for such violations:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress. 42 U.S.C. § 1983.

COURT RULE INVOLVED

The dismissal of petitioner's complaint and the decision of the Seventh Circuit Court of Appeals was premised upon Rule 12 (b) (6):

> Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion . . . .
> (6) failure to state a claim upon which relief can be granted . .
> Rule 12 (b) (6), Federal Rules of Civil Procedure

STATEMENT OF THE CASE

Petitioner brought this action for Declaratory and Injunctive Relief against the Justices of the Illinois Supreme Court and two Illinois trial judges in the Federal District Court for the Northern District of Illinois. Petitioner sought a declaration of her Federal civil rights as they affect her access to the Courts of the State of Illinois and asked for an injuction protecting those rights. Petitioner seeks no money damages.

1. The Original Cause of Action

On the night of October 6, 1966, Everett Adkins was struck and killed by a railroad train at an unguarded grade crossing in Booneville, Iowa, His widow, Leva Adkins, petitioner here, has been attempting since that time to obtain some compensation from the parties whose negligence caused the death of her husband.

2. Suit in Federal District Court in Iowa

Mrs. Adkins first brought suit on October 18, 1966, in a Federal District Court in Iowa against the Chicago, Rock Island & Pacific Railroad Company, a railroad headquartered in Illinois. Extensive discovery was undertaken by both parties in that action. However, during the course of pre-trial proceedings the parties agreed the action should be discontinued in the Federal Court and that Court approved a dismissal without prejudice on November 9, 1967, based on that Stipulation of the parties.

3. Suit in Illinois

Petitioner later filed a new civil action in the Rock Island County Circuit Court in Illinois, on January 16, 1968, and, still later, moved to add several individual Illinois citizens as defendants on May 14, 1968. On August 12, 1968, a point in time well within the Statute of Limitations, the Illinois trial court ordered the addition of those defendants and process was served on them. The Illinois trial court then refused to entertain the railroad's motions for dismissal for ***forum non conveniens*** since there was no alternative forum available for suit against the individual defendants from Illinois. None of the factual issues raised by the ***forum non conveniens*** questions were heard or decided by the Court due to the absence of an alternative forum. At trial, the jury returned a verdict in the sun of $449,757.00 against all of the defendants and judgment was entered on the verdict.

4. The Appeal

The defendants appealed the Illinois judgment, raising a variety of issues. The Illinois Appellate Court affirmed the judgment of the trial court on all questions raised. The Illinois Supreme Court did not find any error in the two lower courts' acceptance of the petitioner's evidence or legal theories, but reversed and ordered the suits against all defendants, including the Illinois individuals not amenable to service elsewhere, dismissed on the grounds that Illinois was an incovenient forum for trial of the action. The petitioner attempted, by petition for rehearing, to obtain consideration in the Illinois Supreme Court of the deprivation of her constitutional rights which would result if judgment were entered on that basis, but was denied a hearing on September 23, 1973.

5. The Effect of the Defendants' Action

Should the threatened dismissal of her lawsuit be carried out, petitioner will have entirely lost her cause of action against the individual defendants without having received any decision as to the legal or factual merits of her claim against them and despite having timely filed suit against them. She will also be forced to file a new lawsuit against the corporate defendant in an Iowa court and relitigate the entire case against that defendant at considerable expense.

6. Proceedings Below

The District Court refused to enjoin the threatened destruction of petitioner's cause of action, holding that it had no jurisdiction to do so and, alternatively, that petitioner had failed to state a claim cognizable under 42 U.S.C. § 1983. Petitioner was not permitted an opportunity to submit evidence substantiating the allegations of the complaint. The Seventh Circuit Court of Appeals affirmed.

REASONS FOR GRANTING WRIT

I.

The decision of the Seventh Circuit Court of Appeals denies to petitioner any remedy for violation of her Federal civil rights despite the contrary directive of 42 U.S.C. § 1983.

The actions of the State judicial officers in this case are so grossly violative of petitioner's due process and equal privileges and immunities rights that it would indeed be difficult to find a more appropriate instance for exercise of Federal injunctive power under 42 U.S.C. § 1983. A critical reading of the opinions in both lower courts clearly indicates that, while the Federal judges were highly doubtful about the propriety of the Illinois Supreme Court's actions, they had no intention of exercising their authority over those judicial officers.

This Court has had recent occasion to review the summary dismissal of a civil rights complaint in ***Scheuer v Rhodes***, 416 U.S. 232, 40 L. Ed. 2d 90, 94 S. Ct. 1683 (1974):

When a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admissions, its task is necessarily a limited one. The issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims. Indeed it may appear on the face of pleadings that a recovery is very remote and unlikely but that is not the test. Moreover, it is well established that, in passing on a motion to dismiss, whether on the ground of lack of jurisdiction over the subject matter or for failure to state a cause of action, the allegations of the complaint should be construed favorably to the pleader.

In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. ***Conley v Gibson*** U.S. 41, 45-46, 2 L Ed 2d 80, 78 S Ct 99 (1957) (footnote omitted).

* * * *

> In dismissing the complaints, the District Court and the Court of Appeals erroneously accepted as a fact the good faith of the Governor, and took judicial notice that "mob rule existed at Kent State University." There was no opportunity afforded petitioners to contest the facts assumed in that conclusion. There was no evidence before the courts from which such a finding of good faith could be properly made and, in the circumstances of these cases, such a dispositive conclusion could not be judicially noticed. We can readily grant that a declaration of emergency by the chief executive of a State is entitled to great weight but it is not conclusive. ***Scheuer, supra***, 136, 249-50.

When challenged on Federal Constitutional grounds, the acts of state judicial officers should be accorded no more conclusiveness than those of executive officers.

It is a principle of long-standing that the right of a state court to refuse to hear cases is limited by the requirements of the Federal Constitution. ***Blake v McClung***, 172 U.S. 239, 43 L. Ed. 432, 19 S. Ct. 165 (1898); ***McKnett v St. Louis & S. F. R. Co.***, 292 U.S. 230, 78 L. Ed. 1227, 54 S. Ct. 690 (1934).

It is equally well-settled that the Fourteenth Amendment due process guarantee requires that a State court provide to litigants before it two basic elements: notice and a hearing. ***Baldwin v Hale***, 68 U.S. 223, 17 L. Ed. 531 (1863); ***Baltimore & O. R. Co. v United States***, 298 U.S. 349, 80 L. Ed. 1209, 56 S. Ct. 797 (1936); ***Goldberg v Kelly***, 397 U.S. 254, 25 L. Ed. 2d 287, 90 S. Ct. 1011 (1970). State courts are not, of course, absolutely prohibited from applying the ***forum non conveniens*** doctrine and refusing to entertain a litigant's action. Such a refusal must however be made on the basis of rational considerations as well as some assurance that the litigant does in fact have an alternative forum in which to bring suit. ***Gulf Oil Corp. v Gilbert***, 330 U.S. 501, 91 L. Ed. 1055, 67 S. Ct. 839 (1947); ***Broderick v Rosmer***, 294 U.S. 629, 79 L. Ed. 1100, 55 S. Ct. 589 (1935). As plainly appears from the complaint in this case (reprinted in the District Court's opinion), neither of those requirements was met by the defendants here.

II.

Further Clarification of the Federal courts' equitable powers under 42 U.S.C. 1983 is necessary.

The principal flaw in the decisions of the lower courts in this case derives from a single misapprehension of what is sought by petitioner. Petitioner does not seek "review" of any substantive decision of the Illinois Supreme Court. Petitioner attacks only the Constitutionally impermissible procedure whereby that decison was reached. This distinction is critical to proper resolution of actions brought under 42 U.S.C. §1983 against state judicial officers as was recently pointed out by Judge Wisdom:

> The doctrine of ***Brown v Chastain*** is not applicable here. First, the suit filed in federal court in ***Brown v Chastain*** sought to attack the ***substantive*** decision rendered by a state court on a constitutional question: that is, the complaint in the federal [case was an] attack on the merits of the case in the state court. In the instant cases, the plaintiffs resort to federal court in an attempt to challenge the ***procedure*** used by the state court, i.e. appellate review of facts. The judgments on the merits of the state tort actions are not attacked. ***Melancon v McKeithen***, 345 F. Supp. 1025, 1031 (Ed. La., 1972), affirmed 409 U.S. 1098, 34 L. Ed. 2d. 679, 93 S. Ct. 908 (1973)

Unless this Court is prepared to eschew the principles to be applied to civil rights actions set forth in ***Mitchum v Foster***, 407 U.S. 225, 32 L. Ed. 2d. 705, 92 S. Ct. 2151 (1972), the crucial distinction pointed out by Judge Widsom must be acknowledged. If there are indeed constitutional limitations upon a state court's power to turn away litigants without hearing, this petitioner must at the very least be accorded an opportunity to prove the allegations of her Complaint. While all possible deference should be accorded the actions of State court officials, such deference should not automatically preclude even a minimal opportunity to present a Constitutional grievance to a Federal Court.

RELIEF SOUGHT

Certiorari should be granted and the Circuit Court should be reversed per curiam.

Respectfully submitted,

HARRY M. PHILO
Philo, Maki, Cockrel, Robb,
Spearman and Cooper
409 Griswold, Fourth Floor
Detroit, Michigan 48226

VERNE LAWYER
427 Fleming Building
Des Moines, Iowa 50309

FRANK SCHUBERT
403 Safety Building
Rock Island, Illinois 61201

Attorneys for Petitoner

DATED: Detroit, Michigan
October 10, 1975

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

LEVA ADKINS, Administratrix
of the Estate of EVERETT
ADKINS, deceased,

Plaintiff,

-vs-

THE HON. ROBERT C. UNDERWOOD;
THE HON. WALTER V. SCHAEFER;
THE HON. DANIEL P. WARD;
THE HON. JOSEPH H. COLDENHERSH;
THE HON. THOMAS E. KLUCZYNSKI;
THE HON. HOWARD C. RYAN;
THE HON. CHARLES H. DAVIS;
THE HON. DAN H. McNEAL; and
THE HON. CHARLES J. SMITH,

Defendants.

No. 73 C 2558

MEMORANDUM OPINION AND ORDER

This cause comes on the defendants' motion to dismiss the complaint for want of jurisdiction and for failure to state a claim upon which relief can be granted.

This is an action seeking to redress the alleged deprivation of the plaintiff's civil rights as guaranteed by Article IV and the Fourteenth Amendment to the United States Constitution and protected by 42 U.S.C. § 1983.

This Court allegedly has jurisdiction under 28 U.S.C. §§ 1331 and 1343.

The plaintiff, in the complaint, alleges, ***inter alia***, the following facts:

1. The plaintiff Leva Adkins is a citizen of the United States and a resident of the State of Michigan.
2. Defendants, The Honorable Robert C. Underwood, The Honorable Walter V. Schaefer, The Honorable Daniel P. Ward, The Honorable Joseph H. Goldenhersh, The Honorable Thomas E. Kluczynski, The Honorable Charles H. Davis, The

Honorable Howard C. Ryan are and were at all times relevant to this complaint residents of the State of Illinois, and Judges of the Supreme Court of the State of Illinois; and defendents, The Honorable Dan H. McNeal and The Honorable Charles J. Smith are and were residents of the State of Illinois, and Judges of the Circuit Court of the County of Rock Island, State of Illinois.

3. On January 16, 1968, as administratrix of her husband's estate, the plaintiff filed a civil action in the Circuit Court of Rock Island County, in the State of Illinois, against the Chicago, Rock Island & Pacific Railroad Company, a Delaware corporation, doing business in Illinois, for damages resulting from the death of her husband when the tractor trailer he was driving was struck by a defendant's train at a railroad crossing in Booneville, Iowa. Plaintiff, as administratrix of her husband's estate, had on October 18, 1966, filed a civil action in the Federal District Court for the Southern District of Iowa, Central Division, against the Chicago, Rock Island & Pacific Railroad Company for damages arising out of her husband's death. However, on November 9, 1967, plaintiff and defendant in that action stipulated to dismissal without prejudice and the case was ordered dismissed without prejudice in the Federal District Court in accordance with Rule 41 (a)(i) (ii) of the Federal Rules of Civil Procedure.

4. On May 14, 1968, plaintiff moved to amend her complaint to add as defendants three employees of the railroad, W. B. Throckmorton, W. B. Johnson, and R. V. Loftus, all residents of Illinois. On August 12, 1968, that motion was granted by defendant McNeal, trial judge for the action. Plaintiff dismissed her complaint against defendant Johnson only on December 18, 1968. On August 12, 1968, defendant McNeal, trial judge for the action, denied the motion of the defendant railroad for dismissal for ***forum non conveniens***. Defendants Throckmorton and Loftus have never agreed to submit to service of process in Iowa, or any forum other than Illinois; never requested dismissal for ***forum non conveniens;*** and in fact, there was no forum other than Illinois in which they could have been sued by plaintiff. The case proceeded to trial, and the jury returned a verdict for plaintiff against all defendants in the amount of four hundred forty-nine thousand seven hundred fifty-seven ($449,757) dollars.

5. The Appellate Court of the State of Illinois ordered a remittitur in the sum of one hundred ninety-nine thousand seven hundred fifty-seven ($199,757) dollars, and unanimously affirmed the judgment of two hundred fifty thousand ($250,000) dollars for plaintiff against all defendants.

6. On May 14, 1974, the Supreme Court of the State of Illinois reversed the verdict of the trial court and the Appellate Court in the action, on the grounds of ***forum non conveniens*** concluding, without a hearing on the issue, that plaintiff had joined the individual defendants in bad faith solely to gain access to the Courts of Illinois, and remanded the case to the trial court, with instructions to grant the defendant railroad's motion to dismiss for ***forum non conveniens***. The Court in its opinion allegedly attached prejudice to plaintiff's earlier dismissal of a similar case upon order of the Federal Court that it was to be without prejudice. The Court denied rehearing on September 27, 1973[1]

7. If dismissal is entered by Judge McNeal or Judge Smith, defendants herein, plaintiff will be denied such access to the Illinois court as is available to the citizens of Illinois allegedly in violation of the privileges and immunities clause of the Constitution of the United States (Article IV, Section 2) and denied the equal protection of the laws guaranteed by Section 1 of the Fourteenth Amendment to the United States Constitution. If the motion to dismiss is granted, plaintiff will allegedly be denied the due process of law guaranteed by Section 1 of the Fourteenth Amendment to the Constitution of the United States in that:

   a. plaintiff has never had an adversary hearing on the question of her good faith in suing the individual defendants or on the convenience of an alternate forum; and
   b. If the case is dismissed, plaintiff will be forced to retry a case which has already been tried at great cost to her in time and money before a court of competent jurisdiction; she will again be forced to expend that time and money and will not be able to sue the two individual defendants.

8. Since the case has been heard by the highest Illinois court, plaintiff is without an adequate remedy at law. Plaintiff applied for rehearing by the highest Illinois court and rehearing was denied.

---

1. See Adkins v Chicago, Rock Island & Pacific Railroad Co., – Ill. 3d –, 301 N.E. 2d 729 (1973).

9. If the motion to dismiss is granted, plaintiff will allegedly suffer immediate and irreparable injury in that:
   a. she will be unable to proceed against the individual defendants as there is no forum other than Illinois in which they can be sued;
   b. she will be forced to relitigate issues which have already been adjudicated in a court of competent jurisdiction; and
   c. the decision is further violative of Federal law in that the Illinois Supreme Court attaches prejudice to the dismissal ordered to be without prejudice by the Federal District Court in Iowa.
10. Plaintiff asks this Court to issue a temporary restraining order and preliminary injunction directing that defendants McNeal and Smith not grant the motion to dismiss in the State of Illinois Civil Action titled ***LEVA ADKINS, as Administratrix of the Estate of Everett Adkins, deceased vs. CHICAGO, ROCK ISLAND & PACIFIC RR CO. et al.***, and reinstate the judgment of the Appellate Court in the State of Illinois in that action; and upon final hearing of this cause, a declaratory judgment and permanent injunction be entered by this Court;
    a. declaring that the action by the defendant Illinois Supreme Court judges in ordering dismissal of the above case was unconstitutional as violating plaintiff's rights under Article IV, Section 2 and the Fourteenth Amendment, Section 1 of the United States Constitution; and
    b. permanently enjoining defendants from ordering the case dismissed or dismissing the case and directing them to reinstate the judgment below.

The defendants, in support of their motion to dismiss, contend that:

1. This Court lacks jurisdiction to act as a court of direct review for judgments rendered by the Illinois Supreme Court.
2. The plaintiff has failed to state a claim upon which relief can be granted under 42 U.S.C. § 1983.
3. The defendants are all Justices of the Illinois Supreme Court and Judges of the Circuit Court of Rock Island County and are immune from suit based on their activities performed in the course of their judicial duties.
4. The action is barred by collateral estoppel.
5. There is an absence of indispensable parties to this action.

The plaintiff, in opposition to the instant motion, contends that this Court has jurisdiction over the instant controversy and that the allegations in the complaint are sufficient to adequately

state a cause of action.

I. THE PLAINTIFF IN THE COMPLAINT FAILS TO ADEQUATELY STATE A CLAIM UNDER 42 U.S.C. § 1983 ON WHICH RELIEF CAN BE GRANTED.

This is not an action to enjoin a proceeding pending in a state court. This is an action to enjoin the enforcement of a final judgment rendered by the highest court of the State of Illinois. This is not an action to enjoin prosecutors or other state officials from further state court proceedings. It is an action to review the validity of judicial actions performed within the judicial actions assigned by state law.

Whether or not there may be circumstances in which an injunction may lie to prevent or preclude judges from performing their official functions, there is no authority whatsoever to suggest, as is suggested in the instant action, that they may be called to account, by way of either legal or equitable relief, for the propriety of judgments that they have already rendered. See ***Brown*** v ***Dunne***, 409 F. 2d 341 (7th Cir. 1969).

The doctrine of judicial immunity is not for the protection or benefit of a malicious or corrupt judge but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences. It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feeling in the litigants. Since a judge is just as human as those he judges, his errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may pursue him with litigation charging malice, corruption or deprivation of civil rights. To impose such a burden on judges would not contribute to just and fearless decision-making but to decisions made under the veil of intimidation. ***Pierson v Ray***, 386 U.S. 547 (1967).

The Civil Rights Act of 1871, 42 U.S.C. § 1983, creates no claim that may be asserted against judges acting within their judicial capacities in order to destroy a final judgment of a state court. ***Brown v Dunne, supra; Gross v State of Illinois***, 312 F. 2d 257 (7th Cir. 1963); S. ***Kolnich v Spolar***, 317 F. wd 847 (7th Cir. 1963).

By commencing this civil rights suit in federal court after the adverse ruling of the Illinois Supreme Court and before the United States Supreme Court has had an opportunity to rule on this matter, the plaintiff seeks to thwart the final state court judgment by relitigating in a trial ***de novo*** the very issues that had been litigated in the state trial court and on appeal. If this newly pro-

posed appellate procedure is permitted, many state civil cases will not only face chaos but also uncertainty and unenforceability. Mere errors and irregularities occurring in a judicial proceeding are to be differentiated from a situation wherein the proceeding itself is a sham or nullity. ***Sarelas v Sheehan***, 326 F. 2d 490 (7th Cir. 1963), cert. denied 377 U.S. 932 (1964). The federal courts and the federal civil rights acts do not guarantee a citizen against the loss of a private civil action due to alleged irregularities such as in the instant action in the state court trial and appeal. It is clear that the instant complaint fails to state a proper cause of action because the defendant judges are immune from the instant action because they were merely performing their official judicial duties[2]

II. THIS COURT LACKS JURISDICTION TO ACT AS A COURT OF ERRORS AND APPEALS TO REVIEW THE JUDGMENT OF A STATE SUPREME COURT.

It appears that the plaintiff in the instant action is seeking to have this Court review the propriety of the judgment of the Illinois Supreme Court, to reverse that judgment and to reinstate the judgment of an intermediate Illinois Appellate Court. This Court is not authorized or competent to perform the function of reviewing state court decisions.

While lower federal courts were given certain power in the Judiciary Act of 1789, they were not given any power to directly review cases from state courts, and they have not been given such powers since that time. ***Atlantic Coast Line Railroad Co. v. Engineers***, 398 U.S. 281 (1970). Only the Supreme Court is authorized to review on direct appeal the decision of state courts. From the beginning this country has had two essentially separate legal systems. Each system, federal and state, proceeds independently of the other with ultimate review in the United States Supreme Court of federal questions raised in either system.

---

[2] The instant action is clearly distinguishable from the case of *Mitchum v. Foster*, 407 U.S. 225 (1972) which the plaintiff heavily relies on. In the instant case, there is no state statute allegedly unconstitutional "on its face"; there is no allegation of bad faith or harrassment; the state suit is not a criminal proceeding which by its nature could result in a "chilling effect" on First Amendment rights. The instant state suit was initiated by the plaintiff. Further, there is no pending state proceeding which can be enjoined. The plaintiff in the instant action comes to this court seeking to reverse or to avoid or to nullify a final judgment from the highest state court in Illinois in a civil action.

Even if a state court decision is constitutionally wrong, that does not make the judgment void, it merely leaves it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication. Under the legislation of Congress, no court of the United States other than the United States Supreme Court can entertain a proceeding to reverse or modify a state court judgment which is in error. Rooker v Fidelity Trust Co., 263 U.S. 413 (1923).

Accordingly, it is hereby ordered that the defendants' motion to dismiss is granted and the cause is dismissed.

ENTER: William J. Bauer
JUDGE

DATED: January 16, 1974.

In the
United States Court of Appeals
For the Seventh Circuit

No. 74-1250

LEVA ADKINS,

Plaintiff-Appellant,

v.

THE HONORABLE ROBERT C. UNDERWOOD, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division
No. 73-2558-C
WILLIAM J. BAUER, *Judge*

ARGUED NOVEMBER 21, 1974 — DECIDED JULY 17, 1975

Before FAIRCHILD, *Chief Judge*, PELL, *Circuit Judge*, and WYZANSKI, *Senior District Judge*•.

PER CURIAM. Plaintiff brought this civil rights action under 42 U.S.C. §1983 against the seven justices of the Supreme Court of Illinois and two judges of the Circuit Court of the County of Rock Island, Illinois. Federal jurisdiction is asserted under 28 U.S.C. §§1331 and 1343. Plaintiff's complaint seeks no damages, but asks declaratory and injunctive relief to reinstate a favorable verdict plaintiff had won in the Illinois Circuit Court, but which had been set aside on appeal. On defendant's motion, the district court dismissed the complaint for lack of jurisdiction and failure to state a claim. For the reasons set forth below, we affirm.

• Senior District Judge Charles E. Wyzanski, Jr. of the District of Massachusetts is sitting by designation.

Plaintiff, a resident of Michigan, filed a civil action in a federal district court in Iowa on October 18, 1966 against the Chicago, Rock Island & Pacific Railroad Company for damages arising out of her husband's death in an accident that occurred in Iowa. On November 6, 1967 this case was dismissed without prejudice pursuant to a stipulation agreed to by the parties. On January 16, 1968 plaintiff brought a similar action against the railroad in the Circuit Court of Rock Island County, Illinois.

In March 1968 the railroad moved to dismiss on the ground of forum non conveniens. Prior to a ruling on the motion, plaintiff amended her complaint naming three railroad employees, who were residents of Illinois, defendants. The trial judge denied the forum non conveniens motion on August 12, 1968. The case proceeded to trial, and the jury returned a verdict for plaintiff in the amount of $449,757. Both the railroad and the individual defendants raised the forum non conveniens issue in their post-trial motions.

On appeal, the Illinois Appellate Court ordered remittitur of $199,757, but in all other respects, including the denial of the forum non conveniens motion, affirmed plaintiff's judgment.[1]

After granting leave to appeal, the Supreme Court of Illinois reversed, holding that the forum non conveniens motion should have been granted, and remanded the case with directions to dismiss the action.[2]

The Court reviewed matters of record with respect to the Iowa and the Illinois actions and concluded "All of the factors normally considered thus point to the conclusion that Rock Island County is not an appropriate forum for the trial of this case." The Court considered the joinder of the two individual defendants, the third having been dismissed. The Court pointed out that they were added four months after the Illinois action was commenced, that "It seems apparent that the individual defendants were joined in order to make the Illinois action look different

[1] *Adkins* v. *Chicago, Rock Island & Pacific R.R. Co.*, 2 Ill. App.3d 906, 274 N.E.2d 507 (1971).

[2] *Adkins* v. *Chicago, Rock Island & Pacific R.R. Co.*, 54 Ill. 2d 511, 301 N.E.2d 729 (1973).

from the Iowa action, and thereby provide some sort of basis upon which the denial of a motion to dismiss could be predicated," and that it was not clear as a matter of substantive law that persons occupying their positions are liable in tort for injuries such as caused the death of plaintiff's decedent. The Court concluded, "We are not convinced that the individual defendants were joined with probable cause and in good faith for the purpose of obtaining a judgment against them." Stating and applying a state rule, the Court decided to dismiss.

Plaintiff then filed a petition for rehearing contending that plaintiff had no hearing on the forum non conveniens issue nor on the issue of her good faith, and that the Supreme Court's decision violated the due process clause of the Fourteenth Amendment and the privileges and immunities clause of Art. IV, §2 of the United States Constitution. The Supreme Court of Illinois denied this petition without oral argument. Plaintiff did not seek certiorari in the Supreme Court of the United States but chose to file the instant action in federal district court renewing her constitutional claims.

At the outset we note that if plaintiffs are permitted to bring suits of this ilk under the guise of the civil rights statutes, the relationship between state and federal courts will be radically altered. Plaintiff is asking an inferior federal court to order the Supreme Court of Illinois to vacate its judgment and reinstate a favorable trial court verdict and judgment.[3] Granting such relief would inter-

[3] Plaintiff's prayer for relief requests:
WHEREFORE, plaintiff prays that:
1. This Court issue a Temporary Restraining Order and Preliminary Injunction directing that defendants McNeal and Smith not grant the motion to dismiss in the State of Illinois Civil Action titled LEVA ADKINS, as Administratrix of the Estate of Everett Adkins, deceased vs. CHICAGO, ROCK ISLAND & PACIFIC RR CO, et al, and reinstate the judgment of the Appellate Court of the State of Illinois in that action.
2. Upon final hearing of this cause, a Declaratory Judgment and Permanent Injunction be entered by this Court:
a. declaring that the action of the defendant Illinois Supreme Court judges in ordering dismissal of the above case was unconstitutional as violating plaintiff's rights under Article IV, Section 2 and Amendment XIV, Section 1 of the United States Constitution;
b. permanently enjoining defendants from ordering the case dismissed or dismissing the case and directing them to reinstate the judgment below.
3. Plaintiff be granted such other relief as to this Court shall appear appropriate and necessary.

fere with discretion at the heart of the state court decision-making process, jeopardizing the repose of state court judgments as well as offending firmly-held notions of comity. For these reasons alone equitable relief may well be inappropriate. *See generally O'Shea* v. *Littleton*, 414 U.S. 488, 499-501 (1974).

Orchestrating this theme, defense counsel has argued that federal courts lack jurisdiction to hear plaintiff's claim,[4] that the doctrine of judicial immunity bars suit,[5] and that the doctrine of res judicata precludes our review of the Illinois court's decision.[6] Whatever the limits on the power of federal courts to compel state court judges to modify or rescind their decisions, we need not address these thorny issues for we agree that plaintiff's complaint fails to state a claim upon which relief can be granted.

Plaintiff predicates her 1983 claim upon two alleged constitutional violations. First, she argues that she has been denied due process. Specifically, she contends that a hearing must be held on the questions of the convenience of alternative forums and her good faith in joining the Illinois residents as defendants. Apparently there was no evidentiary hearing devoted to these matters. Yet the forum non conveniens issue was argued at each stage of the litigation, the Supreme Court decided the issue on the facts of record before it, and plaintiff makes no claim that she was deprived of a full opportunity to put into that record any other facts in the circuit court relevant to this issue. If it be true that with respect to the question of plaintiff's good faith in joining the individual defendants, the Illinois court concluded that in the light

[4] *See Rooker* v. *Fidelity Trust Co.*, 263 U.S. 413 (1923); *Paul* v. *Dade County, Florida*, 419 F.2d 10, 12-13 (5th Cir. 1969), *cert. denied*, 397 U.S. 1065 (1970). *But see Brown* v. *Chastain*, 416 F.2d 1012, 1017-23 (5th Cir. 1969) (Rives, J., *dissenting*).

[5] *Compare, Cheramie* v. *Tucker*, 493 F.2d 586, 588-89 (5th Cir. 1974), *cert. denied*, 43 L.W. 3212 (U. S. October 15, 1974), *with Littleton* v. *Berbling*, 468 F.2d 389, 406-08 (7th Cir. 1972), *rev'd on other grounds sub nom., O'Shea* v. *Littleton*, 414 U.S. 488 (1974).

[6] *See e.g., Francisco Enterprises, Inc.* v. *Kirby*, 482 F.2d 481, 485 (9th Cir. 1973), *cert. denied*, 415 U.S. 916 (1974); *Lackawanna Police Benevolent Association* v. *Balen*, 446 F.2d 52, 53 (2d Cir. 1971) (*per curiam*); *Goss* v. *State of Illinois*, 312 F.2d 257, 259 (7th Cir. 1963). *But see Preiser* v. *Rodriquez*, 411 U.S. 475, 509, n.14 (1973) (*Brennan, J., dissenting*); *Florida State Board of Dentistry* v. *Mack*, 401 U.S. 960, 961 (1971) (White, J., *dissenting from denial of cert.*).

of the facts of record plaintiff had, and failed to discharge the burden of proving good faith, there is nothing in the complaint to show that this conclusion was invidiously motivated, nor that reaching it was otherwise outside the legitimate scope of the judicial decision-making process.

Moreover, plaintiff made use of her opportunity to file a petition for rehearing and argued her present constitutional claim in that petition. She had a full hearing on her case at trial and on appeal, and her present objection can only be that the Illinois court erred in its evaluation of the facts before it.

Even if it can be said that the Supreme Court of Illinois erred in judgment, "mere errors and irregularities are not sufficient to show a purposeful conspiracy to deny due process." *Skolnick* v. *Spolar*, 317 F.2d 857, 859 (7th Cir. 1963), *cert. denied*, 375 U.S. 904; *Brown* v. *Dunne*, 409 F.2d 341, 343 (7th Cir. 1969), and there are no allegations that the Supreme Court of Illinois proceedings were a sham or that the justices invidiously used their office to deprive plaintiff of her rights. *Delia* v. *Court of Common Pleas of Cuyahoga County*, 418 F.2d 205, 206 (6th Cir. 1969), *cert. denied*, 396 U.S. 886; *Sarelas* v. *Sheehan*, 326 F.2d 490, 491-92 (7th Cir. 1963), *cert. denied*, 377 U.S. 932 (1964). Absent such averments, the complaint does not present a deprivation of federally protected rights.[7]

The second constitutional peg on which plaintiff purports to hang her 1983 claim is the privileges and immunities clause of Art. IV, §2. She asserts that the decision of the Supreme Court of Illinois denied her access to the Illinois courts on the same footing as Illinois citizens.

We agree that the privileges and immunities clause forbids certain discriminations on the basis of state citizenship. *Blake* v. *McClung*, 172 U.S. 239 (1898). But, here, plaintiff's cause was dismissed not because she was a citizen of another state, but because, in the Illinois

[7] We think that in any event, where seemingly regular state judicial proceedings are under attack, mere conclusionary statements should be held insufficient.

Per Curiam Opinion

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

July 17 , 1975

Before

Hon. THOMAS E. FAIRCHILD, Chief Judge

Hon. WILBUR F. PELL, JR., Circuit Judge

Hon. CHARLES E. WYZANSKI, Senior District Judge *

LEVA ADKINS,
Plaintiff-Appellant,

No. 74-1250 vs.

THE HONORABLE ROBERT C. UNDERWOOD, et al., Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois
Eastern Division
No. 73 C 2558
William J. Bauer, Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the opinion of this court filed this date.

---

* Senior District Judge Charles E. Wyzanski, Jr., of the District of Massachusetts is sitting by designation.